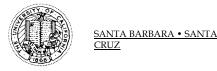
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May 24, 2007

The Honorable Stephen L. Johnson Administrator, U.S. Environmental Protection Agency 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460

Dear Administrator Johnson:

The National Advisory Committee (NAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC) held its twenty-eight meeting on April 18-19, 2007, in Alexandria, Virginia.

The format of this meeting differed significantly from others in the past. The purpose of this new approach was to address the need expressed by EPA to increase the relevance of CEC activities to US constituencies. For the first time, the NAC and GAC committees dedicated most of their time and attention to defining priority ideas that may be considered for future project development within the CEC. The outcome of this new approach was to sketch out potential projects that might maximize the relevance of CEC's activities to both US, and North American constituencies. The potential projects that stemmed from this open dialogue of the NAC, GAC and a small number of invited guests representing US constituencies are appended to this letter. These projects are the result of the consensus reached by both committees at the meeting; we recommend that they be considered as the basis for a dialogue on these ideas with the aim of incorporating them as part of the Operational Plan (2008-2010) if and when funding becomes available, trilateral consensus has been reached, and the recommendations of the Secretariat are fully considered.

One other issue occupied our time: a discussion on the upcoming Council Session in Morelia, Michoacán, scheduled to meet June 26-27, 2007 and the issues that might be highlighted by the US at that meeting. Our recommendations on this matter are also attached.

On a matter related to our own membership structure, we would like to note that we have been waiting for some time now on the nomination of one new member of the NAC from the non-governmental sector (NGO). The NAC respectfully requests that when you consider nominating

new members to the NAC, one of the members representing NGOs be a representative of a First Nation, or that this person represents an NGO whose core mission is the environmental, social, or economic wellbeing of First Nations in the US.

The NAC would like to take this opportunity to welcome Irene Henriquez as new Chair of the Joint Public Advisory Committee (JPAC); we were very pleased to have an update report on JPAC's work and very much look forward to working with her committee.

We would like to express our appreciation to the invited guests that joined the NAC and GAC at this meeting and participated in our discussions; they are: A. Christine Eppstein with the Environmental Council of States, Ken Rosenfeld and Jim Brooks with the National League of Cities, David Blochstein with the National Council for Science and the Environment, and John Pendergrass and Carl Bruch with the Environmental Law Institute. Also participating from several federal agencies were: Janet Bearden with EPA's Office of Enforcement and Compliance Assurance, Russell Smith with the Office of the United States Trade Representative, Fred Stern with the Department of State, and Elizabeth English from the National Oceanic & Atmospheric Administration. From the EPA Office of International Affairs we thank the following officials for attending the meeting: Jerry Clifford, Daniel Thompson, and Evonne Marzouk. Finally, we extend our gratitude to Rafael de León, Mark Joyce, Oscar Carrillo, Juliana Madrid, Jannell Young-Ancrun, Nancy Bradley, and Geraldine Brown, from the EPA Office of Cooperative Environmental Management for organizing and staffing an excellent meeting once again.

We hope this advice will be of use to you, and other US government officials as we continue to think about how best we can support the CEC in achieving its mission and serving the citizens of North America as it was intended to do.

Thank you for the opportunity to advise you on these matters.

Very truly yours,

M. Dolores Wesson Chair, National Advisory Committee

cc: Judith Ayres, Assistant Administrator for International Affairs
Jerry Clifford, Deputy Assistant Administrator for International Affairs
Rafael de León, Director, Office of Cooperative Environmental Management
Jeff Wennberg, Chair, U.S. Governmental Advisory Committee
Irene Henriquez, Chair, Joint Public Advisory Committee
Adrián Vazquez, Executive Director, Commission in Environmental Cooperation
Patricia Muñoz, Acting Chair, Grupo Operativo del Consejo Consultivo Nacional para el
Desarrollo Sustentable

Members of the U.S. National Advisory Committee:

Dennis Aigner Aldo Morell
Karen Chapman Carlos Perez
Irasema Coronado Anne Perault
Adam Greene Chris Wold

Richard Guimond

# National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

# Advice 2007-1 (May 24, 2007): Response to EPA's request on potential projects for consideration by the CEC with emphasis on their relevance to US audiences

The NAC and GAC were asked by EPA at this meeting to think about potential projects for consideration by the CEC with emphasis on their relevance to US and North American audiences. The NAC welcomed this unique opportunity to address new ideas for possible implementation within the CEC, and extends its sincere appreciation to the EPA officials, invited guests, and its sister committee members on the GAC that worked on developing these draft project proposals.

The proposals jointly developed by the NAC and GAC are as follows:

- 1) North American Climate Registry
- 2) Renewable Energy Credit Certification Program
- 3) Impact of the Informal Economy on the Environment
- 4) North American Fellowship and Visiting Scholars Programs
- 5) Expanding Sustainable Trade
- 6) Resolution of Citizen-Identified Environmental Problems
- 7) Promoting Environmental Compliance

Recommendations: These preliminary proposals are the result of the consensus reached by both the NAC and GAC committees at the meeting; we recommend that the US government explore them as potential projects for future development. The primary criteria we used in formulating them were their strong potential for impact, relevance, and utility to a wide range of audiences in both the US and North America. We hope they will be considered as the basis of an open dialogue on these ideas with the aim of incorporating them as part of the CEC's Operational Plan (2008-2010) if and when funding becomes available, and only after consensus has been reached with Mexico and Canada, and the recommendations of the Secretariat are fully considered.

#### 1. NORTH AMERICAN CLIMATE REGISTRY

*Goal:* To assist the Parties and their sub-national jurisdictions (states, provinces and tribes) in contributing to efforts promoting transparency, accountability and the use of best practices in greenhouse gas emissions accounting and reporting.

Justification: As momentum grows at the national and sub-national level for both voluntary and mandatory GHG emissions reduction programs, the need for consistency between greenhouse gas reporting programs intensifies, as does the demand for environmental integrity in emissions accounting, reporting and verification. Prior to the formation of The Climate Registry, there were no fewer than three active programs in the U.S. (California, U.S. EPA and U.S. DOE); four Canadian Programs (VCR, CleanAir Canada, Ontario Emissions Trading Registry and Quebec-Ecogeste Registry), and six international or NGO programs including the Chicago Climate Exchange. Recently, The Climate Registry has been incorporated with a Board of Directors consisting of 20 U.S. States and several tribes to unify the California, Northeast and other regional registry efforts. Several Canadian provinces have expressed interest in joining The Climate Registry pending approval by the newly formed Board of Directors.

Approach to be used: The CEC could contribute to existing efforts by facilitating negotiations to develop or adopt a standard continental registry. While The Climate Registry appears to be generating much support, sub-national jurisdictions that have not decided to join might benefit from an independent analysis of the registry options, or from participation in a CEC conference where the benefits, obligations and other issues associated with membership are presented and discussed. Assistance contributed by the CEC to facilitate increased international registry participation is in keeping with the CEC's continental perspective.

**Potential partners:** The sub-national jurisdictions and the regional organizations they have created would be the primary beneficiaries of this project. Also, national and international corporations have been urging the use of a single standard for measuring, reporting, and registering emissions reduction efforts. Industry leaders on this issue would have an interest in the success of this project. Finally, large NGOs with an interest in climate policy might have an interest in supporting or participating in the project.

Potential sources of funding and/or other forms of collaboration: The potential partners listed above may be able to bring resources to the project. In addition, much of the climate change planning at the state, regional and tribal level has been heavily supported by a handful of private foundations, with which the CEC could leverage its funding through the organizations these foundations support.

Connection to the CEC and/or the NAAEC: This project could be a new initiative within the existing project, Enhancing North American Air Management. The effort to standardize emissions reporting from cement plants and the effort to promote comparability of air emissions information and report the same in North American Power Plant Emissions are models of success that could yield significant benefits if successfully applied to climate change.

#### 2. RENEWABLE ENERGY CREDIT CERTIFICATION PROGRAM

*Goals:* Through this project, the CEC will develop objective requirements for renewable energy projects and provide a mechanism for certification of Renewable Energy Credits (RECs). These criteria and subsequent certifications could become the standard used to certify projects to generate electricity using renewable energy. With the CEC's objective credibility, this certification could catalyze growth in investment in renewable energy projects to and thereby dramatically increase "green" electrical generating capacity.

Justification: Existing electrical generating technology using renewable resources is generally not cost-competitive with fossil fuel generation. Sale of RECs (also known as Green Tags) can make renewable energy electrical generation projects viable. Project developers can make their investment economically viable by selling electricity to an electrical utility at the same price as low-cost fossil-fuel generated power, and selling credits to cover the additional cost of the renewable energy. In this way the purchaser of the REC can subsidize renewable energy electrical power generation without necessarily being connected to the same electrical energy grid as the renewable energy generator. This mechanism can help build renewable energy generation capacity anywhere in North America without having to be physically connected to the generator. CEC involvement and certification can provide objective assurance to investors that the credits being purchased are legitimately committed to an increment of renewable energy power generation.

Approach to be used: There are two parts to this project. First, the CEC would engage renewable energy experts in defining objective, measurable criteria to judge potential renewable energy projects and credits. This definition should include a method for approving a project and controls to ensure that credits are sold only to the extent of the capacity of the generating facility. The criteria should include a requirement that the energy generator be connected to a large, commercial electrical distribution grid with multiple electrical generators. A periodic follow-up audit program should also be established.

Second, the CEC would establish an office to manage the certification program and sale of RECs. Potential renewable energy project developers would request certification of their project from the CEC and pay a non-refundable fee. If the project is approved, the CEC could manage the sale of the certificates and charge a small handling fee to cover the cost of management and auditing the facilities periodically.

The CEC Renewable Energy Credit Certification office could be self-sufficient with expenses covered by the sale of certificates and credits.

Potential partners, sources of funding and/or other forms of collaboration: This project should work with the CEC's Renewable Energy Experts Committee (REEC) to develop the objective criteria for certification. Once the criteria are defined, an office for renewable energy certification should be established with a physical presence in each of the three countries. The office could be self-funded once certifications begin. Alternatively, the CEC could partner with a non-profit organization, such as the Center for Resource Solutions (a San Francisco nonprofit) that administer the "Green-e" certification program.

Connection to the CEC and/or the NAAEC: This program is consistent with the existing project called "Promoting the North American Renewable Energy Market." Furthermore, as people are hired and trained to staff the Renewable Energy Certification offices in Mexico, Canada and the United States, the capacity building objective will be advanced.

#### 3. IMPACT OF THE INFORMAL ECONOMY ON THE ENVIRONMENT IN MEXICO

*Goal:* The goal of this project is to raise awareness in governments and other constituents of how the presence of a large informal economy can impact the environment in Mexico by restricting the development of critical infrastructure and preventing investment in environmental protection technologies. The project will produce a report that explains this issue to a range of audiences and will conclude with a workshop to present the main findings.

*Justification:* While not directly an "environmental" issue, the presence of a large informal economy is a root cause of many issues that have direct environmental impacts. Through this study, the CEC will develop an environmental rationale for addressing the informal economy. The study will review a number of issues related to the informal economy and explain their impact on the environment, including the absence of business registrations, the lack of clear property rights, the inability to access credit.

- *a) Business Registrations:* By definition, an informal business is not registered as a legal entity and does not have a recognized business license to operate. Unregistered businesses exist in all countries but account for the vast majority of businesses in many developing countries due to overly time-consuming and expensive registration procedures. Unregistered business, particularly when they total 80-90% of the overall economy, present a direct barrier to the effective implementation and enforcement of environmental laws and regulations. Additionally, while most unregistered enterprises pay many local fees, most do not appear on state or national tax rolls and thus do not contribute to state or federal budgets that fund environmental agencies or inspectors.
- *b) Property Rights:* Informal economies are also characterized by the lack of clear property rights for both business enterprises and individuals (these two categories overlap in the case of the self-employed a large percentage of the informal economy). The lack of clear property rights has prevented the use of property taxes as a means to fund critical local infrastructure, including fresh water delivery, wastewater treatment, and electricity distribution. The environmental impacts that result include the poor drinking water, water pollution, and air pollution.
- *c)* Access to Credit: The lack of clear property rights also limits access to credit for individuals and business enterprises since these groups are prevented from using their most valuable asset their land and buildings as collateral to secure a loan. In addition to the negative impacts this has for economic development, it has a direct environmental impact by inhibiting investment in newer, more energy and resource efficient equipment or in direct environmental protection technologies.

Approach to be used: The primary approach to developing the report will be desktop research. The report could be produced as a CEC (Council) publication or as a report of the Executive Director under Article 13. As an awareness-raising report, it will be relatively short and therefore will take 3-6 months to complete and publish.

In developing the report, the CEC will review existing literature on the informal economy to identify the primary effects on the above issues, as well as others. It will then assess where

the identified effects result in environmental impacts. The report will then prioritize action that needs to be taken to address the root cause of the environmental impact. The project will also include a single workshop to announce the release of the report and present the major findings.

Potential partners, sources of funding and/or other forms of collaboration: Potential partners for the project and/or sources of information include the World Bank, the International Finance Corporation, the Organization for Economic Cooperation and Development, and the Institute for Liberty and Democracy (Hernando de Soto). The project should also include members of the CEC Enforcement Working Group.

Connection to the CEC and/or the NAAEC: The proposed project is most closely related to the CEC projects on "Harnessing Market Forces for Sustainability" and "Trade and the Enforcement of Environmental Laws," but covers issues that the CEC has not addressed directly to date.

#### 4. NORTH AMERICAN FELLOWSHIP AND VISITING SCHOLARS PROGRAMS

Goals: This proposal consists of two parallel programs: one for graduate students and another for visiting scholars. The goals of the fellows program are: 1) to provide graduate students in academic institutions throughout North America with first-hand professional experience in science, policy, and law at governmental institutions of Canada, Mexico, and the US; and 2) bring their knowledge to bear on issues related to the North American Agreement on Environmental Cooperation (NAAEC) and the CEC. Similarly, the goal of the visiting scholars program is to provide post-graduate and/or post-doctoral researchers and professors with opportunities to conduct research at North American governmental agencies within the scope of the NAEEC and the CEC. Students and visiting scholars will be selected competitively from Canada, Mexico and the US for their expertise and proven interest in environmental and/or trade issues.

*Justification*: The academic community of North America has much to contribute to the environment and trade arena, and has yet to be engaged in activities led by the CEC Secretariat and the parties -- Mexico, Canada, and the US. The fellows and scholars program will provide a mechanism for both students and investigators to work at governmental institutions in North America by matching students and scholars who have demonstrated interest and expertise in environment and/or trade with 'host' offices. At the same time, the program will provide the 'host' agencies with students and scholars (scientists, policy analysts and attorneys...) with top-quality expertise in a wide range of disciplines and direct access to current academic research and technological developments. Areas of study and expertise for fellows and scholars alike should include any issues relevant to the CEC work, and/or the NAAEC. Potential offices might include: the CEC's headquarters in Montreal, USEPA in Washington DC, Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT) in Mexico City, and Environment Canada in Quebec. This program will foster collaborations between academic institutions and governmental agencies, bring cutting-edge science, technology and knowledge into the environmental agencies of the three parties, bridge the gap between the academic and policy communities, and provide an invaluable training opportunity for future the environment and trade leaders of North America.

Approach to be used: On an annual basis, a competitive selection process open to academic institutions from all three countries will be held by the Secretariat for both the fellows and the visiting scholars program. Criteria for selection might include academic achievement, social service and commitment to environmental/trade issues, robust knowledge of at least two of the three languages of the CEC, or of a native North American language spoken by any First Nation in North America. Applicants should be selected from all three counties with equal participation. Placement should also be distributed among the three parties' institutions to the degree possible. Host agencies and offices would be solicited in advance and must express a need for a student or scholar to address a stated need, and a commitment to provide a valuable career or research opportunity. A rotation at an agency in a foreign country, in addition to spending time in an assignment in the country of origin, might be explored as an avenue to create a better understanding of the institutional frameworks and environment/trade challenges of all three parties. Emphasis on placing individuals in counties other than their own should create a better understanding of environmental and trade-related institutions throughout North America.

Potential partners, sources of funding and/or other forms of collaboration: Host offices in some cases may be approached as sources of matching funds for the fellows and scholars program. Partnerships with private foundations and industries to support a portion of the program or a set number of students or scholars should be explored by the Secretariat. Similar programs exist in the US that might serve as good models as the Secretariat considers the implementation of this program. Some of these examples include the National Sea Grant Fellowship Program administered by the National Oceanic and Atmospheric Administration (NOAA), the Presidential Management Fellows Program administered by the Office of Personnel Management, and the Science and Technology Fellows Program of the American Association for the Advancement of Science (AAAS).

Connection to CEC and/or the NAAEC: This program is designed to share capacity between the academic and governmental sectors of the three countries. It falls within the core mission of the CEC and can be easily targeted to address different areas of need over time (e.g., air quality, environmental indicators, trade and its effects.)

#### 5. EXPANDING SUSTAINABLE TRADE

*Goal*: It is proposed that the CEC undertake a comprehensive study of further opportunities for "sustainable trade", especially in Mexico. The goal of this project is two-fold. First, it will identify and assess national laws and policies that either impose environmental harm or promote environmental benefits to enhanced trade. Second, it will identify emerging products and markets that hold promise and that may be used to encourage economic development and sustainable trade. The desired end result of the assessment is to include these emerging products and markets in the CEC portfolio.

*Justification*: It is well-documented that Mexico's natural resources are being severely overtapped in some cases (fisheries, forests, grasslands and water to name a few), and that a community's natural resources are often sacrificed in favor of unsustainable economic development, or development that does not take into account sufficiently the environmental impact of its operations (e.g. coastal tourism). While the impacts of NAFTA in Mexico (in terms of both economic benefit and disadvantage) are complex, small farmers and ejidatarios from rural communities have in many cases been further disadvantaged by NAFTA, adding to the exodus of workers in search of jobs in the United States.

Immigration issues, Mexico's struggling economy coupled with its rich biodiversity, and the collective responsibility of the CEC parties to engage in development that preserves rather than exploits ecocapital are all reasons why this type of assessment should be carried out. Such an assessment might also be conducted with contributions from visiting scholars through the CEC North American Fellows and Scholars Program proposed under a previous section.

Approach to be used: The project would identify national laws and policies that impact the environment, with the goal of promoting laws and policies that benefit it and discouraging laws and policies that harm it, in the context of both existing and potential trade relations among the parties. As an example, to the extent that fisheries subsidies are harming the environment, the CEC could work collaboratively with the parties to eliminate them. The North American Regional Action Plans developed to assess and reduce the risks from certain chemicals, such as lindane and DDT should be explored as a model that might be applied to fisheries management and other environmental challenges. Similarly, where laws and policies benefit the environment and/or the conservation of natural resources, such as laws that promote the use of renewable energy, the CEC should promote them to other communities or parties.

A second goal of this project is an assessment aimed at identifying emerging products and markets that may be used to advance economic development and also promote the conservation of natural resources in sensitive ecological zones, or zones where conservation-based development seems like the most beneficial strategy to pursue (e.g. shade-grown coffee and the eco-palm projects).

The project would involve research on economic trends, existing community development projects, and interviews with various development, aid agencies, and conservation NGOs, as well as the business community and lending institutions, who may be called upon to

help set up seed funding, and revolving or low-interest loans. The study should also examine any existing controversies with regard to sustainability certification programs and seek to ensure that adequate mechanisms for measuring and achieving the desired level of sustainability are in place.

Potential partners, sources of funding and/or other forms of collaboration: Such a project should attract a number of potential partners, including academic institutions, World Trade Organization (WTO), Organization for Economic Co-operation and Development (OECD), United Nations Environment Program (UNEP), and United Nations Conference on Trade and Development (UNCED), as well as NGOs and business organizations looking for entrepreneurial opportunities.

Connection to CEC and/or NAAEC: Presently, the CEC Operational Plan contains six projects under the Trade and Environment Pillar, ranging from promoting the North American renewable energy market to an ongoing environmental assessment of NAFTA. The portfolio of projects and accomplishments to date is both comprehensive and impressive. Some projects are focused on specific negative impacts of freer trade while others point to the possible harmonization of or synergy between trade and the environment. This project relates directly to Project 12 in the current CEC Operational Plan.

#### 6. RESOLUTION OF CITIZEN-IDENTIFIED ENVIRONMENTAL PROBLEMS

Goal: The goal of this project is to assist the Parties and citizens to more effectively and efficiently address immediate and specific environmental problems. The project envisions a "problem-solving" function for the CEC to resolve environmental concerns raised by citizens. This function is distinct from Article 14's process for submissions on enforcement matters. This problem-solving function is intended to avoid Article 14 submissions, and address issues that may not relate to enforcement failures. The goal is not to establish a process for assigning fault, but rather to create a process for resolving environmental problems. In addition, the process is not intended to pressure the Parties to act. On the contrary, it would provide an avenue for Parties to address concerns before these are highlighted publicly. This project would also help achieve the Council's function to under Article 10(1)(f) to "promote and facilitate cooperation between the Parties with respect to environmental matters."

Justification: Despite the objective of the NAAEC to "improve the environment... for the well-being of present and future generations," and the existence of mechanisms under the NAAEC designed to draw attention to specific environmental concerns in North America, many significant environmental concerns remain unaddressed. In addition, existing legal mechanisms for addressing environmental problems are time consuming, expensive and often not effective for securing results. The CEC's role in assisting the Parties' efforts to address these concerns would be enhanced by using existing mechanisms and authorities to secure a stronger "problem-solving" function for the CEC.

Approach to be used: This project would require the CEC to take on a stronger problem-solving function, within the existing provisions of the NAAEC. Pursuant to Article 10(1)(b), which authorizes the Council to "develop recommendations on the further elaboration" of the NAAEC, the Parties would elaborate a process for citizens to seek resolution of specific environmental problems through a new, non-adversarial process. The process would provide criteria pursuant to which the Secretariat would determine whether particular requests should proceed through the process, and whether the Secretariat would be able to facilitate resolution of the problem.

For requests that meet the criteria, the Secretariat would work with the requestors and the Party or Parties concerned to resolve the issue. The Secretariat's functions would vary depending on the nature of the issue. It would seek to identify technology, information, financing, or other resources and catalyze resolution of the problem. (Those resources could be available through governments, businesses, academic institutions, non-profit institutions, international organizations, etc.) In some cases, it might simply pass on such information to the requestors; in others, it might facilitate direct contacts between the requestors and other interested parties; in still others, it might prepare a short report outlining an approach that all interested parties might consider taking. Finally, in some cases it might determine after further consideration that it cannot assist with resolution of the problem.

Several approaches to this problem-solving function that might serve as models for the CEC come from international financial institutions and include the Office of Accountability for the U.S. Overseas Private Investment Corporation (OPIC), and the Compliance Advisor Ombudsman for the International Finance Corporation, among others.

Potential partners, sources of funding and/or other forms of collaboration: Many institutions have the technical, financial and legal expertise to partner with the CEC to develop this project. The choice of partners will vary greatly depending on the nature of the problem at hand. Environmental agencies at the federal and local level in all three counties, academia, and the business sector are all potential partners. From a legal perspective, examples of Canadian partners include the Sierra Legal Defence Fund, and the West Coast Environmental Law; in Mexico, the Mexican Center for Environmental Law, and the Instituto de Derecho Ambiental, A.C. (IDEA); and, in the US, the Center for International Environmental Law, the International Environmental Law Project, and Earthjustice.

Connection to the CEC and/or the NAAEC: This project fits within the Capacity Building pillar. Depending on the range of issues brought to the attention of the CEC, the project could help build the capacity of citizens as well as officials at all levels of government. Additionally, this project will promote the CEC's contribution towards protecting the environment. The project should serve as an international model for cooperation, building partnerships, avoiding litigious situations, and resolving tangible environmental problems.

#### 7. PROMOTING ENVIRONMENTAL COMPLIANCE

Goal: The three NAAEC Parties use an array of judicial, quasi-judicial, and administrative proceedings to promote compliance with environmental law. These include administrative compliance orders, negotiated settlements, and citizen suits, among others, as well as mandatory and voluntary mechanisms. Some jurisdictions may not be aware that certain compliance mechanisms have been tried elsewhere in North America. In addition, it may not be known which of these strategies are effective and in which contexts they are effective. This project seeks to identify different strategies for environmental compliance and ascertain when certain strategies help achieve compliance with environmental laws. The project will also disseminate the results of this work widely within the North American region. In so doing, the project will provide a more sophisticated understanding of cutting-edge ways of promoting compliance.

Justification: A central goal of the NAAEC is to promote pollution prevention policies and practices and enhance compliance with, and enforcement of, environmental laws and regulations. To accomplish these goals, Article 5(2) requires each Party to ensure that administrative, quasi-judicial, and judicial proceedings are available to sanction and remedy violations of its environmental laws. Article 6 requires each Party to ensure that interested persons are allowed to request the Party's competent authorities to investigate alleged violations of environmental law and persons with a legally recognized interest in a particular matter must have appropriate access to administrative, quasi-judicial, and judicial proceedings for the enforcement of environmental law. Article 7 requires each Party to ensure that its administrative, quasi-judicial, and judicial proceedings are fair, open and equitable. The overall thrust of Articles 5 through 7 is to create an effective compliance regime that, under certain circumstances, involves the public.

Approach to be used: This project will identify the types of administrative, quasi-judicial, and judicial proceedings that are available to government officials and citizens in each of the three Parties to promote compliance with environmental laws. It will also assess how these proceedings implement the requirements of Article 7. The project will then identify the situations in which one type of proceeding may be more appropriate than in another (e.g., availability of resources, type of regulated facility). The project could also compile reasons officials and citizens prefer one type of proceeding over another when seeking the resolution of an environmental dispute. For example, does one proceeding yield preferred outcomes, such as monetary sanctions or injunctive relief, or is a proceeding preferred because it is viewed as fair (e.g., citizens have confidence in the credibility of the process)?

This project will help policy makers understand the available tools for achieving environmental compliance and when it is appropriate to use those tools. The project will also enable policy makers to identify particular features of processes that are likely to be important for achieving compliance with environmental law. As a consequence, the project will help governments design processes that better meet the goals of environmental compliance.

Potential partners, sources of funding and/or other forms of collaboration: A large range of individuals, academic institutions, and environmental organizations have the technical expertise to partner with the CEC to develop this project. The following list is just a small sample: In Canada: Sierra Legal Defence Fund, West Coast Environmental Law, Stewart Elgie (University of Ottawa), among others; In Mexico: the Mexican Center for Environmental Law, Instituto de Derecho Ambiental, A.C. (IDEA), and others; In the United States: the Center for International Environmental Law, the International Environmental Law Project, Earthjustice, John Knox, David Markell, and Tom Tyler, among others.

Connection to the CEC and/or the NAAEC: The CEC has already initiated the Enforcement and Compliance Cooperation Program, which provides ongoing support to the North American Working Group on Enforcement and Compliance Cooperation (EWG) in examining issues related to shared enforcement and compliance challenges. The program addresses North American regional enforcement issues, enforcement and compliance capacity building issues, and provides in-depth information and analysis on the Parties' enforcement and compliance promotion activities.

The proposed project builds on this work by reviewing compliance mechanisms from a national perspective rather than a regional perspective. The results of the project should be valuable for authorities at the local, state/provincial, and national level.

# National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

## Advice 2007-2 (May 24, 2007): Article 13 topics for consideration

As part of the open table discussion on potential topics for future CEC activities and during the course of the meeting, a number of issues were brought up by the NAC and GAC that were considered good candidate topics for Article 13 reports. Our discussions were preliminary in nature and the issues that were discussed were not prioritized; however, all of the issues listed below were considered to be upcoming challenges with important ramifications in border regions, or with a clear North American perspective. All were considered to be highly relevant to US audiences.

Article 13 potential topics that surfaced as part of the discussions are: 1) transboundary water management including groundwater; 2) sustainable agriculture (e.g., tomatoes, avocados); 3) hazardous materials transportation across international boundaries; 4) varied standards in car emissions in border areas; and, 5) the environmental challenges of inadequate disposal of tires in Mexico originating in the US and Canada.

It was noted that several different types of Article 13 reports have been published during the history of the CEC depending in part on the nature of the problem. Some have been more involved and have taken longer to produce; others have been more focused in scope and have required less effort. The NAC underscores the need for continuing this approach. The Articles 13 process can serve as a quick mechanism to address emerging issues and provide a shorter and more responsive process when needed.

Recommendation: The NAC suggests that the topics identified above be considered as potential Article 13 reports by the Secretariat. The scope of the report can be tailored to the specific issue at hand. Shorter and quicker reports might serve a useful purpose shedding light on some issues. Following along the line of past advice, we recommend that complex and controversial issues, either scientifically or with important policy implications, be addressed in partnership with the academies of sciences of Canada, Mexico and the US. The quality assurance procedures recently adopted by the CEC will assist in ensuring the highest quality of reports and maintain a solid international reputation of the CEC and its work.

## National Advisory Committee to the U.S. Representative to the Commission for Environmental Cooperation

## Advice 2007-3 (May 24, 2007): Response to EPA on Council Session priorities

The NAC briefly considered the seven issues laid out in a working draft for topics that might be showcased at the upcoming Council Session in Morelia and made some recommendations related to all of them.

In general, the NAC discussed the role and effectiveness of the Council Sessions themselves and urges EPA to think about how to use the Sessions as an opportunity to showcase the best work of the CEC. In planning for the next meeting, the NAC supports the idea of opening the Council Sessions to a wider suite of audiences with the goal of making the CEC more transparent and its work more accessible. Council Sessions might be given higher profile by inviting a variety of partnering organizations and stakeholders to provide first-hand testimony of the impact and relevance of the products and information developed by the Secretariat. Council Sessions can provide excellent opportunities to showcase ongoing work, as well as areas in need of further innovation--be it scientific, entrepreneurial, policy-driven--or in achieving public transparency with established audiences, and building new partnerships. Audiences to target include the private sector, academia, civil-society, philanthropic foundations, First Nations, and the press.

- 1) Enhancing access to comparable North American Pollutant Releases and Transfer Sites (PRTR). The NAC was very pleased to learn about the progress achieved lately by the CEC that enables the visualization of the PRTR data on an interactive Google Earth platform. The committee has in the past provided advice urging the CEC to continue emphasizing the delivery of web-based products and data related to this project electronically, as opposed to relying on traditional printed media and reports. Inviting the Chairperson of Google Earth, or a senior representative from Google Earth to the Council Session to talk about how their platforms are now being used to display CEC is an example of showcasing a partnership that highlights the relevance of the work undertaken at the CEC to a variety of users in North America.
- **2) Reporting on the State of the North American Environment.** The NAC restated its very strong support for this project, and for the continuing collaboration of the CEC with the United Nations Environment Programme (UNEP) in this arena. The CEC and UNEP have enjoyed a series of very successful cooperative activities. Among the more valuable have been the CEC's very comprehensive and complete contribution to the North American components of UNEP's *Global Environmental Outlook* publications that describe environmental conditions, activities and needs worldwide. These publications are very valuable descriptions of environmental conditions, measures governments are taking to address them, and future needs for environmental protection.

In addition, UNEP and CEC have collaborated closely on the publication entitled *Environmental Indicators for North America*, which compiles the current status of environmental indicators being used in Canada and the United States. This report examines national,

regional and global indicators, and puts forth ideas and suggestions on regional indicators that may be helpful in the development of indicators applicable to Mexico. The NAC encourages progress on the design of an approach for the development of indicators and its implementation, as well as further definition of the State of the Environment report. We are eager to see progress in this arena and look forward to further discussions in greater detail on this and related projects.

- **3) Article 13 report on green building.** The NAC was very pleased to learn of the progress achieved on this report and looks forward to its publication and the dissemination of its recommendations throughout North America. In order to lend the report the visibility if merits, the NAC suggested that presentation of the report include guests speakers or representatives of stakeholder groups such as the World Green Building Council, el Consejo Mexicano de Edificación Sustentable, the Canada Green Building Council, and the US Green Building Council.
- **4) Vaquita conservation efforts.** The vaquita (*Phocoena sinus*) is a rare species of porpoise endemic to the northern part of the Gulf of California, or Sea of Cortez. Estimates of the number of individuals range from 100 to 300 making it amongst the most endangered of all marine mammals in the world. Gill nets for fish and shrimp cause very high rates of by-catch (entanglement) of vaquitas. Other less well-characterized and longer-term risk factors include disturbances from trawling, and the effects of dam construction on the Colorado River and the resultant loss of freshwater input to the upper Gulf.

This issue was presented by EPA as a high priority issue for Mexico at the upcoming Council Session. The NAC considered this issue briefly and recognized the complexity of the factors that have bearing on the vaquita's survival and recovery. The NAC suggests that in showcasing the collaborative work of the CEC, invited guests and speakers should include CEC's many partners in the academic, governmental, and NGO communities, as well as the philanthropic foundations that continue to support work on the restoration of the Upper Gulf and the sound management of fisheries in the Sea of Cortez.

- 5) Engaging indigenous communities in CEC projects. The NAC briefly discussed the activities presented in the EPA briefing paper. In general, the NAC believes that First Nations are not sufficiently targeted in the dissemination and outreach of the CEC's work. There are a number of priority issues for these communities that have surfaced in past discussions, particularly in border regions, that need to be addressed. This is a priority issue that needs further time on our agenda at a future meeting. We were only able to discuss this issue very generally given the very full agenda for this meeting and request that it is taken up again in more detail at a future time.
- 6) The North American Fund for Environmental Cooperation (NAFEC). The NAC has supported the idea of exploring avenues to fund and bring back the NAFEC in the past (See Advice 2006-6, November 15, 2006.) The NAFEC was an invaluable mechanism to engage community-based partnerships outside of the CEC, address priority issues for these communities, and catalyze capacity-building programs in areas of great need. It targeted community-based organization helping to build capacity locally, and was uniquely positioned to build partnerships across the continent in the NGO community. Additionally it served a very important role as an avenue for outreach, communications of CEC

accomplishments and marketing of CEC work. No other mechanism has taken its place.

7) Emerging issues. The NAC considered this issue briefly and felt it had insufficient information to discuss the idea in depth. The discussion was based loosely on a proposal by the Executive Director of the CEC that was not provided. Hence, we have no substantive comments on this issue at this time.

Recommendation: Efforts to increase the visibility of the CEC's work and its relevance should start with the Council Sessions themselves. Council Sessions should strive to be transparent, open to the public, and publicize the many achievements of the CEC as well as emerging issues and North American challenges. Inviting senior representatives from major corporations, NGOs, private foundations, academia, First Nations and other sectors to share their views, accomplishments and needs on these issues will develop a better understanding and appreciation for the CEC and the relevance of its work.

Recommendation: Invite the Chairman, or a senior representative of Google Earth, to the Council Session in Morelia and request that he or she display PRTR and other CEC data on a Google platform as examples that illustrate applications for decision-making based on CEC's work.

Recommendation: Move forward as swiftly as possible with the implementation of the State of the Environment (SOE) Report and begin discussions on the environmental indicators that will be chosen to monitor the state of the North American environment. Engage the academic community, First Nations, the private sector, NGOs and community-based organizations to assist the CEC in the planning and implementation of the SOE Report.

Recommendation: On the Article 13 green building report, the NAC suggested that the presentation of the report include speakers from major stakeholder groups that will provide testimony on its importance to the building industry.

Recommendation: On the issue of conservation efforts for the vaquita, the NAC urges the inclusion of diverse stakeholders in the presentation of this matter at the Council Session with the aim of underscoring the urgency of the issue and the need for broad collaboration to achieve any measure of success.

Recommendation: The NAC welcomes any opportunity to work on the engagement of indigenous peoples in the work of the CEC. To this end, the NAC requests that the EPA Administrator appoint a member of a First Nation to the NAC to assist us in better understanding and serving the needs and priorities of indigenous communities in the US.

Recommendation: Opportunities to find outside funding and partnerships to bring back the North American Fund for Environmental Cooperation (NAFEC) program should be explored by the Parties and the CEC. There is no better mechanism to engage such a diverse spectrum of stakeholders in the work of the CEC.